

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Development Services

AGENDA DATE: July 21, 2009

CONTACT PERSON/PHONE: Victor Q. Torres, Development Services Director , Ext. 4557

DISTRICT(S) AFFECTED: 5

SUBJECT:

Discussion and action on Conditional B permit for Tres Suenos Unit Two Subdivision

Tres Suenos Unit Two Subdivision obtain permission from the City Council for a Conditional "B" permit as per Section 18.02.103.1.1.6 Prerequisite to Issuance of Permits

BACKGROUND/DISCUSSION:

In accordance with Section 18.02.103.1.1.6 Prerequisite to Issuance of Permits, see attached Letter from JNC DEVELOPMENT INC., owner and developer for Tres Suenos Unit Two Subdivision.

PRIOR COUNCIL ACTION:

Not for this subdivision

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

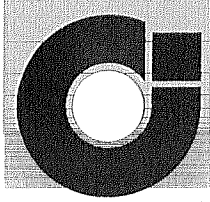
DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____



CONDE INC

June 19, 2009

Omar K. Soueidan
Civil Engineer II
Development Division
City of El Paso
2 Civic Center Plaza
El Paso, TX 79901

RE: Tres Suenos Unit Two

Dear Mr. Soueidan,

JNC DEVELOPMENT, INC., the owner and developer of Tres Suenos Unit Two, is respectfully requesting the approval of the Conditional "B" building permits for this subdivision.

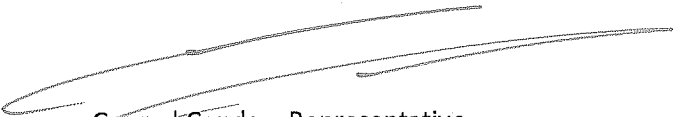
Permits under the 25% Unconditional as well as Conditional "A" building permits have been released.

All of the subdivision improvements are complete. The request for street improvements acceptance has been submitted to the City of El Paso. Currently, we are working in complying with the list of items from the inspection walk through. Development agreements for the subdivision are filed with the County Clerk's Office and enclosed with the request.

The need for requesting Conditional "B" Permits is to allow the home builders to fulfill contract obligations for pre-sale contracts signed for this subdivision. Not meeting the delivery dates set on the contracts would constitute a hardship to the home builder due to breach of contract.

Please call us should you have any questions.

Respectfully,



Conrad Conde – Representative
On behalf of Carlos D. Bombach –President

ENGINEERING/PLANNING/SURVEYING

VISTA HILLS BANK PLAZA / 1790 LEE TREVINO, SUITE 400 / EL PASO, TEXAS 79936 / (915) 592-0283

9
 2
 Courtesy RG
 109
 2pgs

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into effective the 22nd day of January, 2009, by and between JNC Development, Inc., a Texas Corporation, hereinafter referred to as "Developer", and Saratoga Homes, Ltd., a Texas Limited Partnership, hereinafter referred to as "Applicant", for the purpose of complying with Section 18.04.035 of the El Paso City Code (Building and Construction).

WHEREAS, Developer is the owner and developer of Tres Suenos Unit Two, a subdivision in the City of El Paso, El Paso County, Texas (the "Subdivision"); and

WHEREAS, the public improvements required to serve the Subdivision have not been constructed, installed and accepted for maintenance, but Applicant desires to obtain a building permit(s) for a single-family detached dwelling(s) on a lot or lots within the Subdivision; and

WHEREAS, the El Paso City Code (Building and Construction)(the "Code") provides that, although the Subdivision improvements have not been completed, building permits may be issued upon certain conditions, including without limitation, the requirement that Developer and Applicant execute and file this Agreement in the Office of the County Clerk of El Paso County, Texas;

NOW, THEREFORE, for good and valuable consideration, and in accordance with the provisions of Section 18.04.035 of the Code and any and all amendments, supplements, or successors thereto, Developer and Applicant understand and agree as follows:

1. Incomplete Subdivision Improvements. Developer and Applicant acknowledge that all subdivision improvements for the Subdivision have not been constructed, installed and accepted for maintenance by the City of El Paso, or approved by the City Engineer of the City of El Paso.

2. Issuance of Building Permits. Developer and Applicant acknowledge that building permits for a lot within the Subdivision may be issued for single-family detached dwellings (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (i) water and sewer service, (ii) curbing conforming with the appropriate street design cross-section, (iii) any drainage facility and (iv) any other remaining public improvement required by the City Engineer in order to adequately provide for construction on the lot (collectively referred to herein as the "Minimum Improvements"), have been constructed and installed within the right-of-way servicing each such lot, and subject to the following additional conditions:

(a) an Unconditional Building Permit may be issued for the first twenty-five percent (25%) of the lots in the Subdivision (rounded to the next whole lot);

(b) a Conditional "A" Building Permit may be issued for the next twenty-five percent (25%) of the lots within the Subdivision (rounded to the next whole lot) if, in addition to the construction and installation of the Minimum Improvements, the Developer and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas; and

(c) a Conditional "B" Building Permit may be issued for the remaining lots within the Subdivision if, in addition to construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the subdivider, and the Declarant and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas.

3. Risk of Commencement. Although Developer will make every effort to complete the Subdivision improvements and have them accepted for maintenance by the City of El Paso, Applicant expressly assumes ALL RISKS for commencing construction of a dwelling unit(s) prior to completion and acceptance of all Subdivision improvements, and hereby releases and holds Declarant harmless from all claims, losses, damages and expenses (including court costs and attorney's fees) arising from the construction of a dwelling unit(s) prior to the full completion and acceptance of all Subdivision improvements by the City of El Paso. Declarant disclaims all representations and warranties with respect to the anticipated completion of Subdivision improvements.

4. Certificate of Occupancy. Declarant and Applicant also acknowledge that a Certificate of Occupancy will not be issued for any lot unless the dwelling unit constructed thereon meets the Building and Zoning Codes of the City of El Paso and, with respect to Conditional "A" Building Permits, the Subdivision has been approved for acceptance by the City Engineer, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.

NB

5. Release. Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The City Engineer is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.

6. Binding Effect. This Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

This Agreement is executed to be effective on the date and year first set forth above.

DEVELOPER:

JNC Development, Inc.
A Texas Corporation

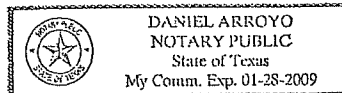
APPLICANT:

Saratoga Homes, Ltd.
A Texas Limited Partnership

By: [Signature]
Carlos D. Bombach, President

By: [Signature]
Nagesh Basnyat, Estimator

STATE OF TEXAS }
COUNTY OF EL PASO }

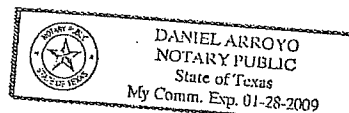


This instrument was acknowledged before me on this 22 day of January, 2009,
by Carlos D. Bombach, President of JNC Land, L.P., on behalf of said Corporation.

(SEAL)

[Signature]
NOTARY PUBLIC FOR THE STATE OF TEXAS

STATE OF TEXAS }
COUNTY OF EL PASO }



This instrument was acknowledged before me on this 22 day of January, 2009,
by Nagesh Basnyat.

(SEAL)

[Signature]
NOTARY PUBLIC FOR THE STATE OF TEXAS